

**SECRETARY OF STATE[721]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 17A.3 and 9B.27, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 43, “Notarial Acts,” Iowa Administrative Code.

The proposed amendment implements the rule makings required under new Iowa Code chapter 9B dealing with notarial acts by notarial officers and notaries public. The statutes governing notarial acts were previously set out in Iowa Code chapter 9E. This is the first of additional rule makings to implement Iowa Code chapter 9B.

Any interested person may make written comments on the proposed amendments on or before May 21, 2013. Written comments should be directed to Charlie Smithson, Legal Counsel, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-5953 or by e-mail to [Charlie.Smithson@sos.iowa.gov](mailto:Charlie.Smithson@sos.iowa.gov).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 9B.

The following amendments are proposed.

ITEM 1. Amend rule 721—43.1(9E) as follows:

**721—43.1(9E 9B) Certificate of notarial acts.** A notarial act shall be evidenced by a certificate signed and dated by a notarial officer, be executed contemporaneously with the performance of the notarial act for which the certificate applies, and not be completed until the notarial act has been performed. The certificate shall include ~~identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer (for example, notary public, judge, clerk of court) and shall include the official stamp or seal of office~~ all of the information required by Iowa Code section 9B.15(1). A certificate of a notarial act is sufficient if it ~~substantially meets the requirements of this rule, or other applicable law~~ meets the requirements set out in Iowa Code section 9B.15(3). ~~The form of the certificate may consist of:~~

1. ~~The short form set forth in rule 721—43.2(9E);~~
2. ~~A form otherwise prescribed by the law of this state;~~
3. ~~A form prescribed by laws or regulations applicable in the place in which the notarial act was performed; or~~
4. ~~Any description of the actions of the notarial officer sufficient to meet the requirements of the designated notarial act.~~

~~By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determination required by Iowa Code section 9E.9.~~

ITEM 2. Rescind rule 721—43.2(9E) and adopt the following **new** rule in lieu thereof:

**721—43.2(9B) Short form certificates.** Short form certificates of notarial acts may be used provided the certificates comply with the provisions of Iowa Code sections 9B.15 and 9B.16. For purposes of this rule, a “record” and an “instrument” have the same meaning and effect.

ITEM 3. Rescind rule 721—43.3(9E) and adopt the following **new** rule in lieu thereof:

**721—43.3(9B) Conflict of interest.** A notarial officer shall not perform a notarial act that creates a conflict of interest as prohibited in Iowa Code section 9B.4(2). For purposes of this rule, a direct financial

benefit does not exist when the notarial officer is compensated on an individual loan commission basis or as provided in Iowa Code section 9B.26(2).

ITEM 4. Rescind rule 721—43.4(9E) and adopt the following **new** rule in lieu thereof:

**721—43.4(9B) Commission as notary public.** An individual applying to the secretary of state for a commission as a notary public shall comply with the requirements and qualifications of Iowa Code section 9B.21. The applicant shall complete and file with the secretary of state an Application for Appointment as Notary Public. The affirmation section on an Application for Appointment as Notary Public shall constitute an executed oath of office as required by Iowa Code section 9B.21(3).

ITEM 5. Rescind and reserve rule **721—43.5(9E)**.

ITEM 6. Rescind rule 721—43.6(9E) and adopt the following **new** rule in lieu thereof:

**721—43.6(9B) Sanctions.** The secretary of state may impose any of the sanctions set out in Iowa Code section 9B.23 including issuing a letter of reprimand as a condition on a commission as a notary public.

**43.6(1) Complaint.** A person alleging misconduct by a notary public shall complete and file a Statement of Complaint with the secretary of state. The secretary of state may also initiate investigations without the filing of a complaint if information is provided to the secretary of state that a notary public has allegedly engaged in conduct prohibited in Iowa Code section 9B.23. A copy of the complaint or a notice of investigation shall be sent to the notary public.

**43.6(2) Investigation.** The secretary of state shall conduct an investigation to determine if the conduct alleged occurred and if sanctions should be imposed. Upon completion of an investigation, the secretary of state shall dismiss the matter, issue a letter of reprimand as a condition on commission, or set the matter for hearing as a contested case proceeding. A dismissal or issuance of a letter of reprimand as a condition on commission is deemed final agency action for purposes of judicial review under Iowa Code section 17A.19.

**43.6(3) Hearing.** If a hearing is set, it shall be conducted as a contested case proceeding in accordance with Iowa Code chapter 17A and administrative rules in 721—Chapter 3. A final decision by the secretary of state is subject to judicial review as provided in Iowa Code section 17A.19.

ITEM 7. Amend **721—Chapter 43**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter ~~9E~~ **9B**.